

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. 4:05CR74 RWS
)
VISHAL SEHJPAL,)
)
Defendant.)

ORDER

Defendant Vishal Sehjpal has filed a motion to exclude the testimony of Richard Vorder Bruegge. Bruegge has been named as an expert witness by Plaintiff. Since 1995, Bruegge has been employed as a forensic scientist with the Federal Bureau of Investigation. He specializes as an examiner of questioned photographic evidence.

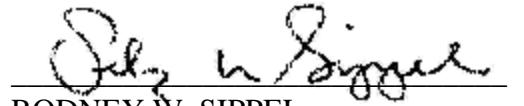
Plaintiff has offered Bruegge to testify regarding the images and video clips seized from Sehjpal. Sehjpal's challenges Bruegge's qualifications and his methodology in reaching his conclusions in his report. I will deny without prejudice Sehjpal's motion to disqualify Bruegge as an expert witness. At the time of the trial in this matter, before Bruegge is allowed to testify, Sehjpal will be allowed to voir dire Bruegge to test his qualifications and his methodology.

Sehjpal has also argued that he is unable to prepare exhibits with which to challenge Bruegge's expertise. Sehjpal wants to produce digital image exhibits depicting child pornography and/or virtual child pornography to challenge Bruegge's methodology. He asserts that two definitions of contraband images in 18 U.S.C. § 2256(8) bar him from preparing these exhibits. Sehjpal moves that I declare these two definitions unconstitutional.

I find that Sehjpal's counsel does not have to create any child pornography, virtual or otherwise, to prepare exhibits for this trial. The exhibits can be made of non-sexually explicit subjects to challenge Bruegge's ability to discern real images of child pornography from modified or virtual images of child pornography. Because counsel has no need to create any images that may be encompassed by 18 U.S.C. § 2256(8) I decline to consider whether these definitions are constitutionally defective.

Accordingly,

IT IS HEREBY ORDERED that Defendant's motion to exclude the testimony of government witness Richard Vorder Bruegge [#47] is **DENIED** without prejudice.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

Dated this 6th day of February, 2007.